

## 4. EITI Board oversight of EITI implementation

This section outlines the procedures and criteria that the EITI Board uses in overseeing and validating EITI implementation. This includes the time frames established by the EITI Board for publication of EITI data and oversight of the Validation process.

### **Article 1 – Adapted implementation.**

Should the multi-stakeholder group conclude that it faces exceptional circumstances that necessitate deviation from the implementation requirements, it must seek prior EITI Board approval for adapted implementation. The request must be endorsed by the multi-stakeholder group and reflected in the work plan. The request should explain the rationale for the adapted implementation.

The EITI Board will only consider allowing adaptations in exceptional circumstances. In considering such requests, the EITI Board will place a priority on the need for comparable treatment between countries and ensuring that the EITI Principles are upheld, including ensuring that the EITI process is sufficiently inclusive, and that EITI disclosures are comprehensive, reliable and will contribute to public debate.

### **Article 2 – Disclosure and reporting deadlines.**

Implementing countries are required to publish timely information (Requirement 4.8). Implementing countries are required to publish the requested information (typically through an EITI Report) within 18 months of being admitted as an EITI country. Thereafter, the published data must be no older than the second to last complete accounting period, e.g. information pertaining to the financial year ending 31 December 2018 must be published at the latest by 31 December 2020.

If the data is not published by the required deadline, the country will be suspended. The suspension will be lifted if the EITI Board is satisfied that the outstanding data is published within six months of the deadline. If the outstanding data is not published within six months of the deadline, the suspension will remain in force until the EITI Board is satisfied that the country has published EITI data in accordance with Requirement 4.8. If the suspension is in effect for more than one year, the EITI Board will delist the country.

### **Article 3 – Initial Validation deadline.**

When the EITI Board admits implementing countries, it will establish a deadline for the commencement of Validation within two and a half years. Subsequent to considering the findings, the Board will establish a deadline for further Validations (Article 5).

## Article 4 – EITI Validation process.

### a) Assessment of each EITI Requirement

The Validation process will assess the country's progress in complying with each of the EITI Requirements. Detailed guidance on the types of evidence that are required in order to make an assessment on individual requirements is set out in the Validation Guide. The level of progress and compliance with each individual EITI Requirement shall be indicated by applying one of the following designations:

**Outstanding progress.** In order for the EITI Board to conclude that a country has made outstanding progress, Validation needs to demonstrate that all aspects of the requirement, including 'expected', 'encouraged' and 'recommended' aspects, have been implemented and that the broader objective of the requirement has been fulfilled through systematic disclosures in government and company systems.

**Satisfactory progress.** In order for the EITI Board to conclude that a country has made satisfactory progress, Validation needs to demonstrate that all aspects of the requirement have been implemented and that the broader objective of the requirement has been fulfilled.

**Meaningful progress.** In order for the EITI Board to conclude that a country has made meaningful progress, Validation needs to demonstrate that significant aspects of the requirement have been implemented and that the broader objective of the requirement is being fulfilled.

**Inadequate progress.** In order for the EITI Board to conclude that a country has made inadequate progress, Validation needs to demonstrate that significant aspects of the requirement have not been implemented and that the broader objective of the requirement is far from fulfilled.

**No progress.** In order for the EITI Board to conclude that a country has made no progress, Validation needs to demonstrate that all or nearly all aspects of the requirement have not been implemented, and that the broader objective of the requirement is not fulfilled.

### b) Overall assessments

The EITI Board will make an assessment of overall compliance with all requirements in the EITI Standard. In determining a country's overall assessment, the EITI Board will apply the same scale as used for the assessment of the individual requirements outlined in Article 4(a) above. The Board will take into account the following factors:

- The results of the assessment of the individual requirements and whether these results all taken together clearly point to an overall assessment of 'satisfactory progress', 'meaningful progress', 'inadequate progress', or 'no progress';
- The advice and recommendations of Validators and the Validation Committee;

## 4. EITI Board oversight of EITI implementation CONTINUED

### ARTICLE 4 b) CONTINUED

- The nature of the requirements that have not been implemented and how close the requirements are to being met;
- The magnitude and complexity of the extractive sector of the country;
- Other barriers to meeting requirements such, as but not limited to, state fragility and recent or ongoing political change, and the extent to which the multi-stakeholder group has undertaken actions to resolve barriers encountered;
- The good faith efforts undertaken by the multi-stakeholder group to comply with the requirements;
- The reasons and justifications for not complying with the requirements; and
- Any plans agreed by the multi-stakeholder group to address the requirements in the future.

In addition to the assessment of the requirements, Validation will document:

- **Efforts to go beyond the EITI Requirements.** This will include efforts by the multi-stakeholder group to address ‘encouraged’ or ‘recommended’ aspects of the EITI Standard. It will also include efforts by the multi-stakeholder group to successfully achieve any work plan objectives that fall outside the scope of the EITI Standard, but that have been identified by the multi-stakeholder group to be necessary objectives for the EITI to address national priorities for the extractive sector. These efforts will be documented in the Validation process but will not be taken into account in assessing compliance with the EITI Standard. Where Validation concludes that the multi-stakeholder group has comprehensively implemented ‘encouraged’ or ‘recommended’ aspects of the EITI Standard, and/or work plan objectives, the EITI Board will recognise these efforts in the assessment card.
- The direction of progress towards meeting each EITI Requirement as compared to the country’s previous Validation(s), indicating whether implementation is improving or deteriorating.

In accordance with the standard Terms of Reference for Validations, the results of the assessment will be documented in an assessment card and a narrative report, presenting the evidence, stakeholder views, references and conclusions.

### Article 5 – Safeguards.

If a country has made inadequate progress or less on any one of the requirements relating to stakeholder engagement (Requirements 1.1, 1.2 and 1.3), the Board will suspend the country in accordance with Article 8.

If, on the first Validation, a country has made meaningful progress on Requirement 1.3 on civil society due to a deficiency related to the civil society protocol, the country will not be suspended and will be expected to demonstrate progress in addressing the corrective actions established by the Board. Failure to demonstrate progress in addressing the corrective actions in subsequent Validations will result in suspension in accordance with Article 8.

## Article 6 – Outcome of Validations.

Where Validation verifies that a country has made satisfactory progress on all of the requirements, the EITI Board will designate that country as having achieved satisfactory progress overall. Implementing countries must maintain adherence to the EITI Principles and Requirements in order to retain this status. Where concerns are raised about whether implementation of the EITI has subsequently fallen below the required standard, the EITI Board reserves the right to require the country to undergo a new Validation. Stakeholders may petition the EITI Board if they consider that status should be reviewed. This request may be mediated through a stakeholder's constituency representative(s) on the EITI Board. The EITI Board will review the situation and exercise its discretion as to whether to require an earlier Validation. Subject to the findings of that assessment, the EITI Board will determine the country's status.

The consequences of not achieving satisfactory progress depend on the Board's overall assessment:

- i. **No progress.** The country will be delisted.
- ii. **Inadequate progress.** The country will be temporarily suspended and requested to undertake corrective actions until the second Validation. For the suspension to be lifted, the country must in its second Validation demonstrate at least meaningful progress.

If a country achieves meaningful progress in the second Validation, the procedure in provision (iii)(2) below applies. If the country achieves inadequate progress, in the second Validation the procedure in provision (i) above applies.

- iii. **Meaningful progress.** The country will be considered an EITI country and requested to undertake corrective actions until the second Validation.

(1) If the country achieves meaningful progress overall in the second Validation, **but with no improvements on individual requirements**, the country will be temporarily suspended and requested to undertake corrective actions until the third Validation. If the country achieves meaningful progress overall in the third Validation but with no improvements on individual requirements, the country will be delisted. If the country achieves meaningful progress overall in the third Validation, but with considerable improvements across several individual requirements (i.e. several but not all requirements that were previously unmet have been met), the country will remain suspended. The Board will establish new corrective actions. Failure to meet all requirements (i.e., address all the outstanding corrective actions) in the fourth Validation will result in delisting.

(2) If the country achieves meaningful progress overall in the second Validation, and **with considerable improvements across several individual requirements** (i.e. several but not all requirements that were previously unmet have been met), the country will be considered an EITI country whilst undertaking corrective actions. If the country achieves meaningful progress overall in the third Validation, the country will be temporarily suspended. The Board will establish new corrective actions. Failure to meet all requirements (i.e., address all the outstanding corrective actions) in the fourth Validation will result in delisting.

**4. EITI Board oversight of EITI implementation** CONTINUED

**ARTICLE 6. iii.** CONTINUED

(3) If the country achieves inadequate progress in the second or subsequent Validations, the procedure in point (i) above applies.

Where Validation verifies that a country has not achieved compliance, the EITI Board will establish the corrective actions that the country is required to undertake and a time frame of 3-18 months for the next Validation, where progress with meeting the corrective actions will be assessed. In establishing the time frame for completing the corrective actions, the EITI Board will consider the nature of the corrective actions and local circumstances. The Board retains the right to establish shorter or longer time frames.

An implementing country may request an extension of this time frame in accordance with Article 7. A country may also request to commence Validation earlier than scheduled by the EITI Board.

An implementing country may maintain a level of overall progress that is less than satisfactory for a maximum of seven years from the date that the country was designated as an EITI country.

**Article 7 – Extensions.**

An implementing country may apply for an extension if it is unable to meet any of the deadlines specified above. The EITI Board will apply the following tests in assessing any extension requests:

1. The request must be made in advance of the deadline and be endorsed by the multi-stakeholder group.
2. The multi-stakeholder group must demonstrate that it has been making continuous progress towards meeting the deadline and has been delayed due to exceptional circumstances. In assessing continuous progress, the EITI Board will consider:
  - i. The EITI process, in particular the functioning of the multi-stakeholder group and clear, strong commitment from government.
  - ii. The status and quality of EITI reporting, including meaningful progress in meeting the requirements for timely reporting as per Requirement 4.8 and efforts to address recommendations for improving EITI reporting.
3. The exceptional circumstance(s) must be explained in the request from the multi-stakeholder group.
4. No extensions will be granted which would increase the maximum candidature period.

## Article 8 – Suspension.

### a) **Suspension due to breaches of the EITI Principles and Requirements**

Where it is manifestly clear that a significant aspect of the EITI Principles and Requirements are not adhered to by an implementing country, the EITI Board will suspend or delist that country. This includes cases where a country has not met the requirements for timely EITI reporting and/or achieving compliance with the EITI Requirements by the deadlines established by the EITI Board. Where the EITI Board is concerned that adherence to the EITI Principles and Requirements is compromised, it may task the International Secretariat with gathering information about the situation and submitting a report to the EITI Board.

Suspension of an implementing country is a temporary mechanism and is subject to the maximum candidature period. The EITI Board shall set a time limit for the implementing country to address breaches of the EITI Standard. During the period of suspension, the country will have the status “suspended”. If the matter is resolved to the satisfaction of the EITI Board by the deadline, the country’s status and level of progress will be reinstated. If the matter has not been resolved to the satisfaction of the EITI Board by the deadline, the EITI Board will delist the country.

### b) **Suspension due to political instability or conflict**

The EITI Board may decide to suspend countries in cases where political instability or conflict manifestly prevents the country from adhering to a significant aspect of the EITI Principles and Requirements. Countries that are experiencing exceptional political instability or conflict may also voluntarily apply to be suspended. In this situation, the government should lodge an application for voluntary suspension with the EITI Board. The government’s application should note the views of the multi-stakeholder group.

Where countries are suspended due to political instability or conflict, the period that the country is suspended will not be counted as part of the maximum candidature period. The EITI Board will monitor and review the situation on a regular basis and retains the right to extend the suspension period or delist the country.

### c) **Lifting the suspension**

The government may apply to have the suspension lifted at any time. The application should document the steps agreed by stakeholders to restart the EITI implementation and Validation process, and the work plan to achieve compliance. If the EITI Board is satisfied that the reasons for suspension have been addressed, the suspension will be lifted. Upon lifting a suspension, the EITI Board will consider setting new reporting and Validation deadlines as appropriate. At all stages in the process, the EITI Board shall ensure its concerns and decisions are clearly communicated to the implementing country.

**4. EITI Board oversight of EITI implementation CONTINUED**

**Article 9 – Delisting.**

Delisting, i.e. revoking a country’s status as an EITI implementing country, will occur if:

- (1) An implementing country has been subject to suspension and the matter has not been resolved to the satisfaction of the EITI Board by the agreed deadline.
- (2) The EITI Board concludes that a country has not made satisfactory progress in implementing the EITI within the established time frames.

Where it is manifestly clear that a significant aspect of the EITI Principles and Requirements are not adhered to by an implementing country, the EITI Board reserves the right to delist the country. A delisted country may reapply for admission as an EITI country at any time. The EITI Board will apply the agreed procedures with respect to assessing EITI country applications. It will also assess previous experience in EITI implementation, including previous barriers to effective implementation, and the implementation of corrective measures.

**Article 10 – Appeals.**

The implementing country concerned may petition the EITI Board to review its decision regarding suspension, delisting or the country designation as having made meaningful or satisfactory progress following Validation. In responding to such petitions, the EITI Board will consider the facts of the case, the need to preserve the integrity of the EITI, and the principle of consistent treatment between countries. The EITI Board’s decision is final. The country concerned may, prior to the notice periods under Article 7 of the Articles of Association, appeal a decision of the EITI Board to the next ordinary Members’ Meeting.

**Outcomes and consequences of Validation**

